IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 552 OF 2000

Union of India & Ors. ..Petitioners.

Versus

N. S. Shende ..Respondent.

Mr. Suresh Kumar i/b. Mr. T. C. Kaushik for the Petitioners.
None for the Respondent.

CORAM: DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 12TH JULY, 2005

P.C.

The petitioners have challenged the order of the Central Administrative Tribunal dated 12th July 1999, allowing the respondents Original Application. The CAT held that the respondent was entitled to charge allowance of 10% presumptive pay on the post of S. D. I., Mangaon for the period 1st March 1996 to 23rd November 1998 and directed the petitioners to calculate and pay the respondent said amount within three months.

2. Petitioner No.2 is the Postmaster General , Mumbai

region. Petitioner No.3 is the Superintendent of Post Offices Raigad. Petitioner no.4 is the Director General (Posts) Department of Posts.

3. In 1996 , the respondent was posted at Mahad as a Sub-divisional Inspector (postal). By an order dated the 29th February, 1996 the respondent was directed to relieve one B.P.Sutar , S. D. I. (Postal) Mangaon who had proceeded on leave. The respondent accordingly took additional charge of the said Sutar's post. Between 1 March 1996, and the 23 November 1998 he continued to hold additional charge of this post.

4. The question that falls for our consideration is whether the respondent is entitled to the additional pay prescribed under the rules for having held additional charge of the said post as aforesaid. The petitioners rejected the respondent application for the same. The rejection was challenged by the respondent in the said original application before the Central Administrative Tribunal.

5. FR- 49 (ii) and F. R. 49 (iii) are relevant and read as under : -

> “F. R. 49. The Central Government may

appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent poss at one time under the Government. In such cases, his pay is regulated as follows:

i. .....

ii. Where a Government servant is formally appointed to hold dual charges of two posts in the same cadre in the same office, carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge; (emphasis supplied)

Provided that if the Government servant is appointed to an additional post, which carries a special pay he shall be allowed such special pay;

iii. Where a government servant is formally appointed to hold charge of another post or posts, which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the highest post, if he holds charge of more than two posts in addition to 10 per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days, but not exceeding three months:

> Provided that if in any particular case, it is considered necessary that the Government servant should hold charge of another post or posts for a period exceeding 3 months, the concurrence of the Ministry of Finance, shall be obtained for the payment of the additional pay beyond the period of 3 months;"

6. The CAT held, that F.R. 49 (iii) and not F.R. 49 (ii) is applicable in the present case. We are in respectful agreement with the reasoning , adopted by the CAT in arriving at this conclusion.

7. It is true that the two posts held by the respondents at the relevant time were of the same cadre and also carried identical scales of pay. The question , however is whether the two posts were held in the same office within the meaning of that expression in F. R. 49. They clearly were not. The respondent was working in the said post at the Mahad office. He held the additional post at Mangaon. There is admittedly a distance of about 40 to 50 kilometres between the two offices. Whatever be the ambit of the expression "the same office" it is clear to us that it cannot apply to two offices which are so far apart.

8. There was no submission , suggesting that the two offices

would come within the ambit of the expression “the same office” used in F.R. 49. We are unable to decipher any reason why the two offices should be considered as falling within the ambit of this expression. We are therefore in respectful agreement with the reasoning adopted by the learned Members of the Bench of the Central Administrative Tribunal.

9. The respondent has in the original application set out in detail the nature of his duties. That they are reasonably onerous and time-consuming , is not denied. If in addition to the same the respondent is also expected to discharge similar functions albeit in the same cadre , but in another post at an altogether different location it is but reasonable that he should be entitled to the benefits that the additional appointment entitles him to.

10. In the circumstances, F.R. 49(ii) does not apply in the facts of this case. F.R. 49(iii) is applicable and the Respondent is entitled to the benefits thereunder.

11. In circumstances , the petition is dismissed. There shall however be no order as to costs.

CHIEF JUSTICE

S.J. VAZIFDAR, J.